

PATENT APPLICATION  
Attorney Docket No. 2705-118  
Seq. No. 2186

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: Nguyen et al.

Serial No. 09/606,790

Examiner: Lashonda T. Jacobs

Filed: June 28, 2000

Group Art Unit: 2157

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For: DEVICES AND METHODS FOR MINIMIZING START UP DELAY IN  
TRANSMISSION OF STREAMING MEDIA

Confirmation No. 6318

MAIL STOP AMENDMENT  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RESPONSE TO RESTRICTION REQUIREMENT**

Responsive to the Restriction Requirement, dated April 20, 2005, applicant hereby elects Group I, claims 1-8, 9-14, and 15-20, drawn to a server for transmitting data over a network to a client having a de-jitter buffer, the server comprising a regular path for transmitting data received from a source at a regular rate; a burst path for transmitting data received from the source at a burst rate higher than the regular rate; etc., classified in class 709, subclass 203, with traverse.

Applicants respectfully disagree that a restriction requirement was proper. The office action states there were distinct inventions that were mutually exclusive species in an intermediate-final product relationship. In all due respect, applicants believe this is not the case. This is particularly shown in that distinctness of intermediate and final products is proven for claims if the intermediate product is useful to make other than the final product. Neither the server nor the client can be seen as the intermediate or the final product of the other.

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Furthermore, 37 CFR 1.142 requires:

If two or more independent and distinct inventions are claimed in a single application, the examiner in an Office action will require the applicant in the reply to that action to elect an invention to which the claims will be restricted, this official action being called a requirement for restriction (also known as a requirement for division). Such requirement will normally be made before any action on the merits; however, it may be made at any time before final action.

The two claim groups satisfy neither condition. Regarding independence, the two disclosed groups also had a relationship between them disclosed in the application, that is, they were connected in design, operation and effect. Regarding distinctness, the two disclosed groups were not patentable over each other, and therefore were not distinct. Sections 3-5 of the action dated 4/20/2005 regarding application no. 09/606,790 are moot because they were conditioned on the inventions being distinct.

The Examiner is encouraged to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

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Respectfully submitted,

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I hereby certify that this correspondence is being transmitted to the U.S. Patent and Trademark Office via facsimile number (703) 872-9306, May 19, 2005.

Signature

*Judy Wigmore*  
Judy Wigmore